IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.11.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM
and
THE HON'BLE MR.JUSTICE S.K.KRISHNAN

Writ Petition No.7968 of 2003
and
WPMP.No.10223 of 2003

D. Palavesamuthu .. Petitioner

vs.

1. The Tamil Nadu Administrative
   Tribunal, rep. by its Registrar
   Chennai 600 104.

2. The Director
   Department of Adidravidar Welfare
   Chepauk, Chennai 600 005.

3. The District Adi-Dravida and
   Tribal Welfare Officer,
   Kancheepuram.

4. The Special Tahsildar
   Adi-Dravida Welfare
   Kancheepuram. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari as stated therein.

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For petitioner : Mr. S. Silambannan
for Mr. S. Raveendran

For respondents : Mr. E. Sampathkumar
Government Advocate for R.2 to 4

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ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai dated 10.01.2003 made in O.A.No.2662 of 2001, the petitioner has filed the above writ petition to quash the same.

2. According to the petitioner, he joined the service in Adi-Dravidar Welfare Department as Secondary Grade Teacher in the year 1965 and continued as such till 1992. Since he was stagnating in the post of Secondary Grade Teacher for 10 years and 20 years, he was awarded Selection Grade and Special Grade respectively on completion of the said period of service. In the month of July,1992 he was promoted as Headmaster of Elementary School run by the Adi-Dravidar Welfare Department. Thereafter, he was entitled to draw the scale of pay due to the Elementary School Headmaster. After 01.06.1988, the post of Elementary School Headmaster had been made as a promotional post. Prior to that date, the post of Elementary School Headmaster is equivalent to Secondary Grade Teacher. Though he worked as Elementary School Headmaster prior to 1988, his status was only as a Secondary Grade Teacher. When he was actually promoted as Headmaster of the Elementary School in 1992, he was entitled to the scale of pay for the Headmaster of Elementary School. He retired in the year 2002. It is the claim of the Department that in 1992, when he had been promoted as Elementary School Headmaster, he was entitled to draw the ordinary scale of pay due to Elementary School Headmaster, but, he was drawing the scale of pay of Special Grade Headmaster from 1993. This was noticed by the Accountant General when his pension papers were scrutinized. The Tribunal, after finding that the petitioner was not entitled to special pay, upheld the objection raised by the Accountant General and dismissed his application; hence, the present writ petition.

3. Heard Mr. S. Silambannan, learned counsel for the petitioner and Mr. E. Sampathkumar, learned Government Advocate for respondents 2 to 4.

4. It is not in dispute that prior to 01.06.1988, the scale of pay of Secondary Grade Teacher and that of Headmaster of Primary Schools were identical. In other words, the Secondary Grade Teachers appointed as Headmasters of Primary Schools were allowed to draw the scale of pay of ordinary grade, Selection Grade and Special Grade applicable to the Secondary Grade Teachers and in addition to that, they were allowed to draw special pay. Based on the representation of the various Associations of Teaching staff, by G.O.Ms.No.1381 Education Department dated 05.10.1990, the Government considered it more appropriate that in respect of Headmasters of Primary Schools, who were in position on 01.06.1988, the services

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rendered in the Secondary Grade Teachers and Headmasters of Primary Schools should be taken into account for the purpose of awarding Selection Grade and Special Grade and accordingly, directed that the Headmasters of Primary Schools under the Government, Local Bodies and all kinds of Management, who were in position on 01.06.1988 should be awarded Selection Grade and Special Grade in the revised scales on or after 01.06.1988, computing the period of service rendered as Secondary Grade Teacher as well as Primary School Headmaster prior to 01.06.1988. The said Government Order further provides that as the post of Headmaster carries higher scale of pay above that of the Secondary Grade Teacher, the promotion after 01.06.1988 shall be allowed fixation of pay in the post of Headmaster as provided under FR.22(b). It is true that the petitioner herein was promoted as Headmaster of Elementary School in the year 1992 and then onwards he is entitled to higher scale of pay than that of the Secondary Grade Teacher. However, it is not in dispute that prior to 01.06.1988, the scale of pay of Secondary Grade Teachers and Headmasters of Primary Schools were identical. In such circumstances, it is the claim of the petitioner that though he was appointed as Headmaster in July, 1992, in view of the fact that scale of pay of Secondary Grade Teachers and Headmasters were identical, the Department is not justified in initiating recovery proceedings based on the wrong assumption of the Accountant General. We have gone through all the materials.

5. As rightly pointed out, in view of the position prevailing prior to 01.06.1988, the act of Department in refixing the pay after a period of eight years cannot be accepted. It is not in dispute that even in the year 1984, the petitioner acted as a Headmaster, Primary School and received Special Grade pay as Headmaster, Primary School.

6. In addition to the above factual details, it is also brought to our notice that the very same Tribunal in a series of applications, accepted the case of the Headmasters similarly placed and rejected the stand taken by the Department vide order dated 02.02.1996 made in O.A.No.449 of 1991 etc., batch. Another order dated 20.03.2002 was made in O.A.No.587 of 1997 etc. The perusal of the above orders make it clear that in respect of identical claim raised by other similarly placed persons, the Tribunal has accepted the similar stand of the applicants and rejected the stand taken by the Department. As rightly pointed out, the very same Tribunal has not accepted the claim of the applicant / petitioner herein. We are of the view that the course and method adopted by the Tribunal cannot be appreciated in the case of the petitioner. Even if it is accepted for the argument sake that salary of the petitioner is fixed in a wrong scale of pay, it is the fault committed by the Department and their Officers, for

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which the petitioner should not be penalised after a lapse of number of years that too after retirement of the petitioner.

7. It is worthwhile to refer the judgment of the Supreme Court in the case of SAHIB RAM v. STATE OF HARYANA (1995 AIR SCW 1780). In that case the Principal of College granted relaxation while fixing the revised pay scale of a Librarian. After finding that the Principal erred in granting him the relaxation, their lordships have concluded,

"....it is not on account of any misrepresentation made by the appellant that the benefit of higher pay-scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to at fault. Under these circumstances, the amount paid till date may not be recovered from the appellant....."

8. The learned counsel appearing for the petitioner has also brought to our notice that the Department has not issued notice or given opportunity before ordering recovery, but proceeded merely on the basis of the report of the Accountant General. According to him, reduction of pay and recovery of pay without hearing him are illegal. In support of the said argument, he relied on the judgment of the Supreme Court in the case of DIVISIONAL SUPERINTENDENT, EASTERN RAILWAY, DINAPUR & OTHERS v. L.N.KASHRI & OTHERS (A.I.R. 1974 SC 1889). In similar circumstances, their lordships have held that,

"The appellants having fixed the scale and confirmed the respondents could not reduce the scale without giving any opportunity to the respondents to be heard. Further more, the respondents on confirmation became entitled to rights to the post and to the scale of pay fixed by the Board".

The said decision is applicable in all force to the case on hand. The above principles and material aspects have not been considered by the Tribunal and the Tribunal has committed an error in dismissing the application of the petitioner.

Under these circumstances, the impugned order of the Tamil Nadu Administrative Tribunal, dated 10.01.2003 made in O.A.No.2662 of 2001 and the order dated 28.02.2001 of the District Adi-Dravidar

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and Tribal Welfare Officer, Kancheepuram are quashed and the writ petition is allowed. No costs. Consequently, connected WPMP is closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Registrar,
   Tamilnadu Administrative Tribunal,
   Chennai - 600 104.

2. The Director
   Department of Adidravidar Welfare
   Chepauk, Chennai 600 005.

3. The District Adi-Dravida and
   Tribal Welfare Officer,
   Kancheepuram.

4. The Special Tahsildar
   Adi-Dravida Welfare
   Kancheepuram.

+1cc to Mr.S.Ravendran,Advocate(SR.45126)
+1cc to Government Pleader, Advocate(SR.45052)

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P.D. Order in
W.P. No.7968 of 2003 and
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